

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 153 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME TAX

Versus

KARTIKEYA V SARABHAI

Appearance:

1. INCOME TAX REFERENCE No. 153 of 1991
MR B.B.NAIK for Petitioner No. 1
MR RK PATEL for Respondent No. 1
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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/07/2003

1. At the instance of the revenue, the following questions, arising out of the order passed by the Income-tax Appellate Tribunal, Ahmedabad Bench-A, have been referred to this Court under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

For Asst. Year : 1980-81:

- (1) "Whether, the Appellate Tribunal is right in law and on facts in allowing office expenses disallowed by the I.T.O. U/s.40-A(3)?"

For Asst. Year : 1981-82:

- (1) "Whether, the Appellate Tribunal is right in law and on facts in allowing office expenses disallowed by the I.T.O. U/s. 40A(3)?"
- (2) "Whether, the Appellate Tribunal is right in law and on facts in allowing interest deficit disallowed by the ITO U/s. 40-A(3)?"

2. Senior Standing Counsel Shri B.B.Naik has appeared for the applicant-revenue whereas learned advocate Shri R.K. Patel has appeared for the respondent-assessee.

3. So far as question no.1, which is common for Assessment Years 1980-81 & 1981-82 is concerned, it has been submitted by the learned advocates that in I.T.R. No. 4/1992, similar legal issues had arisen and the said legal issues have been decided by this Court by its order dated 1st July, 2003 in favour of the assessee and against the revenue. In the circumstances, we answer the first question in the affirmative i.e. in favour of the assessee and against the revenue.

4. So far as the second question for the Assessment Year 1981-82 is concerned, upon perusal of the order passed by the Tribunal, we do not find any independent findings arrived at by the Tribunal on the said legal issue. However, it appears that the Tribunal has placed reliance on its earlier order passed in the case of C.I.T. Vs. Mrinalini V. Sarabhai, I.T.A. No. 1870/Ahd/1986 and by placing reliance upon the findings of the said order, the Tribunal had come to a particular conclusion. In our opinion, as the conclusion arrived at

by the Tribunal is based on the facts of another case, in absence of any discussion regarding the facts of the relevant assessment year, we would not be in a position to gather facts of the case and, therefore, we decline to answer the second question.

The reference stands disposed of with no order as to costs.

(A.R. DAVE, J.)

(A.M. KAPADIA, J.)

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